IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

O R D E R

S.B. CIVIL WRIT PETITION NO.1861/1994
(Ram Prakash Agarwal Vs. Central Cooperative Bank Ltd.)

Date of order : 23.10.2007

P R E S E N T

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. Rajesh Joshi, for the petitioner.
Mr. Sanjay Mathur with
Mr. Harish Purohit, for the respondents.

By way of filing the present writ petition, the petitioner has prayed for directions to the respondents to make payment of gratuity plus remaining salary to the tune of Rs.1,75,550/-. Further, he has prayed for interest on due amount at the rate of 24% per annum w.e.f. 30.4.1993 as well as Rs.50,000/- for harassment suffered by him due to non-payment of his dues.

According to the facts of the case mentioned in the writ petition, the petitioner was employed with the respondent-Bank on 1.12.1959 and he continued in service and ultimately after rendering services of 33

years and four months, he was superannuated on 31.3.1993. According to the petitioner before retirement, he submitted requisite form demanding gratuity under sub-rule (1) of Rule 7 of the Gratuity Rules. However, no payment of gratuity was made to the petitioner. It is further submitted that petitioner's salary was Rs.2190/- plus dearness allowance at the time of his retirement, therefore, as per last pay drawn by him, he calculated his gratuity as Rs.1,74,050 and the same was to be paid on 31.3.1993 but instead of repeated requests, reminders and personal approaches having been made, he has not been paid the amount of gratuity. It is also prayed that in addition to the said amount of gratuity, petitioner's salary of Rs.1500/- was also not paid to him.

Upon representation filed by the petitioner, the Managing Director of the Bank as well as President of Bank also issued direction for payment of due amount of gratuity. In this regard, he has placed on record Annexure-2 and 3 so also the fixation order.

Learned counsel for the petitioner vehemently argued that according to the Gratuity Act, the petitioner was very much entitled to get his gratuity while calculating his gratuity on the basis of last pay drawn as per Section 4 of the Payment of Gratuity Act, 1972. According to the learned counsel for the

petitioner every employee of the Bank who has rendered more than five years of service is entitled for gratuity upon superannuation from service but although all efforts were made by the petitioner to get gratuity but it has not been paid. Therefore, the petitioner has preferred this writ petition in the year 1994 by which he has prayed for directions to the respondents for payment of gratuity and other dues. Learned counsel for the petitioner also prayed for interest as provided under the Act in the event of non-payment of gratuity within specified time.

Learned counsel for the petitioner has invited my attention towards Section 7 (3-A) of the Payment of Gratuity Act, 1972, which reads as under :

> "7 (3-A).- If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3) the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long term deposits, as that Government may, by notification specify:
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> Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the Controlling Authority for the delayed payment on this ground."

Learned counsel for the petitioner vehemently argued that on one hand gratuity was not paid at the time of superannuation and thereafter, when repeated representations were made, then also no payment of gratuity has been paid by the respondent Bank, which is totally arbitrary, illegal and unconstitutional action on the part of the respondent-Bank and can be defined as unnecessary harassment to the petitioner, therefore, cost may also be imposed upon the respondent-Bank for their inaction with regard to non-payment of gratuity.

Learned counsel for the respondents submits that this petition is not maintainable because there is alternative remedy available to the petitioner under the Act. Therefore, this writ petition may be dismissed on the ground of availability of alternative remedy provided under the Act.

I have heard learned counsel for the parties.

In this case, notices were issued by this Court on 18.4.1994 and the same were duly served upon the respondents. However, no reply has been filed by the respondents. More so upon representation filed by the petitioner for payment of gratuity, an order was made by the Managing Director of the Bank on 22.9.1993 to make payment of gratuity in accordance with the

provisions of the Act but that order was also not complied with by the respondent-Bank.

Since reply has not been filed by the respondent-Bank, according to the facts narrated in the writ petition and the documents on record, it is obvious that the petitioner was employee of the respondent Bank and served the Bank as Manager for a period of 33 years and four months, therefore, he was very much entitled to get gratuity in accordance with the provisions of the Payment of Gratuity Act, 1972. However, admittedly, it has not been paid till date, which is totally inaction on the part of the respondent-Bank. No reply whatsoever has been filed in this petition, therefore, it is obvious that the entitlement of gratuity to the petitioner in not in dispute.

Thus, in the interest of justice and without relegating the petitioner to avail alternative remedy for payment of gratuity after pendency of this writ petition since 1994, while allowing this writ petition, the respondent Bank is directed to pay gratuity to the petitioner as per the Payment of Gratuity Act, 1972. Further, it is directed that the gratuity of the petitioner may be calculated in accordance with the provisions of the Payment of Gratuity Act, 1972. After calculating the amount of gratuity as aforesaid, the respondents are also

directed to pay interest to the petitioner at the simple rate of 9% in accordance with provisions of Section 7 (3-A) of the Act of 1972 from the date of his retirement till payment is made. The entire payment of gratuity including the other dues and interest as aforesaid shall be paid to the petitioner within a period of three months. The respondents are also directed to pay Rs.10,000/- cost to the petitioner for harassment and inaction on the part of the respondent-Bank.

(GOPAL KRISHAN VYAS), J.

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